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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 273

IN THE MATTER OF THE PRESENTMENT BY THE
GRAND JURY OF WITNESS I. WALTER MECKLEY,
PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 215-218) has not yet been reported. The opinion of the district court (R. 78-86) is reported at 50 F. Supp. 274.

JURISDICTION

The judgment of the circuit court of appeals was entered on July 22, 1943 (R. 218). The petition for a writ of certiorari was filed August 19, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as

amended by the Act of February 13, 1925. And see *Nye v. United States*, 313 U. S. 33, 41-44.

QUESTIONS PRESENTED

1. Whether the judgment of contempt rendered against petitioner, based upon a presentment charging him with giving obstructive, evasive, perjurious, and contumacious answers to questions propounded to him before the grand jury, is invalid because the presentment, to which was attached a copy of the transcript of the whole of his testimony before the grand jury, did not recite which of his answers offended.

2. Whether the finding of the district court, affirmed by the circuit court of appeals, that petitioner was guilty of contempt before the grand jury, is supported by the transcript of petitioner's testimony before the grand jury.

STATUTE INVOLVED

Section 268 of the Judicial Code (28 U. S. C. 385) provides in part as follows:

The courts of the United States shall have power * * * to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, * * * and the dis-

obedience or resistance by any * * * witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts.

STATEMENT

On May 7, 1943, after petitioner had testified before the same grand jury on January 13, April 28, and May 3, 5, 6, and 7, the grand jury filed a presentment charging him with contumacious conduct (R. 1, 2-7). The presentment recited that the grand jury had been investigating frauds committed against the Government in connection with the construction of the Naval Supply Depot located at Mechanicsburg, Pennsylvania, particularly in respect of the purchase of supplies under a contract entered into by the Government, through the Navy Department, with Brann & Stuart, Inc., a Pennsylvania corporation, on a cost-plus-a-fixed-fee basis; that, from testimony heard by the grand jury, it appeared that, without advertising for competitive bids, Brann & Stuart, Inc., had given petitioner purchase orders for slag and continued giving him such orders after it had received lower bids than the one subsequently submitted by petitioner; and that from these purchase orders petitioner made a net profit of \$79,000, \$68,125.48 of which he withdrew from his bank account at the Harrisburg National Bank,

Harrisburg, Pennsylvania, by checks payable to himself and to cash.¹

The presentment then charged as follows (R. 5-7) :

* * * based on testimony heard by it [the grand jury] * * * on the 13th day of January 1943 and subsequent thereto, the said I. Walter Meckley, after being duly sworn, testified to having withdrawn the sums of money hereinbefore set out made payable to I. W. Meckley which said total amount of \$38,125.48 he withdrew from his bank * * *, but * * * the said I. Walter Meckley will not disclose to the Grand Jury what he did with these specific withdrawals, * * *

* * * * *

* * * the said I. Walter Meckley, a witness before this Grand Jury has given

¹ These checks were as follows (R. 5) :

<i>Payable to I. W. Meckley</i>		<i>Amount</i>
<i>Date</i>		
May 16, 1942	-----	\$500. 00
May 22, 1942	-----	5, 000. 00
May 22, 1942	-----	5, 000. 00
May 26, 1942	-----	5, 000. 00
July 11, 1942	-----	10, 000. 00
October 9, 1942	-----	2, 125. 48
November 17, 1942	-----	5, 000. 00
November 25, 1942	-----	5, 500. 00
Total	-----	\$38, 125. 48
<i>Payable in Cash</i>		
August 21, 1942	-----	\$10, 000. 00
August 22, 1942	-----	10, 000. 00
September 2, 1942	-----	10, 000. 00
Total	-----	\$30, 000. 00

obstructive, evasive, perjurious, and contumacious answers on questions propounded to him before this Grand Jury and has deliberately, willfully, and contumaciously obstructed the investigation of this Grand Jury in the matter hereinabove set forth. * * *

* * * the said I. Walter Meckley, willfully, deliberately, and contumaciously obstructed the process of this Court in uttering answers which were half truths, which impeded, delayed, and hampered the instant investigation, which sought to shut off and block the instant inquiry; in giving answers which were shifts and subterfuges instead of truths; in blocking the search for truth by answering with the first preposterous fancy which he chose to put forward; in contumaciously parrying with the examiner and Grand Jurors; and in otherwise failing and refusing truthfully and fully to answer these proper questions put to him in the proceedings before the Grand Jury.²

² In addition to the contempt charges here quoted, the presentment charged that petitioner falsely testified that William De Sandre, the purchasing agent for Brann & Stuart, Inc., dictated petitioner's January 15, 1942, bid proposal for slag (see R. 5-6). There was testimony at the subsequent contempt hearing in support of this charge, but the district court, in holding petitioner guilty of contempt, "completely disregarded" this oral testimony and the charge of the presentment relative thereto because he did "not believe that this testimony shows beyond a reasonable doubt that this witness did give the perjurious answers as to which the oral testimony was offered" (R. 79).

A copy of the transcript of the whole of petitioner's testimony before the grand jury was appended to the presentment (R. 209), as the presentment alleged (R. 6).

The presentment was read to the district judge on the afternoon of May 7, 1943, in the presence of counsel for petitioner, who requested "an opportunity to review the testimony and also the presentment" (R. 207). He was furnished with a copy of the transcript of petitioner's testimony before the grand jury (R. 207-208, 209). His suggestion that the testimony of other witnesses should also be made available to petitioner was refused, the court stating that the judgment of contempt, if any, would rest solely upon the transcript of petitioner's testimony before the grand jury (R. 208). A rule to show cause was issued the same day, returnable the next morning and reciting that the presentment filed by the grand jury charged that petitioner "had given obstructive, evasive, and perjurious and contumacious answers to questions propounded to him before that Grand Jury and had deliberately, wilfully, and contumaciously obstructed the investigation of said Grand Jury in the process of this Court" (R. 1, 75, 207). On the following day petitioner filed an answer denying, verbatim, the charge outlined in the order to show cause (R. 2, 76-77). At the hearing on the order, petitioner did not dispute the authenticity of the transcript of petitioner's

testimony appended to the presentment and offered in evidence in support of the contempt charge (R. 209).

On May 26, 1943, the district judge filed an opinion (R. 78-86) in which, in addition to setting forth some of the evidence of petitioner's contumacy (R. 81-85), he stated he had examined with "great care" the transcript of petitioner's testimony before the grand jury (R. 80) and found that petitioner's conflicting, obviously false, and evasive answers concealed the true facts and were substantially equivalent to a refusal to testify; that there was "no room for doubt" that petitioner intended to and did obstruct the investigation of the grand jury; and that his contumacy was shown "beyond question" (R. 80-81, 85). The court thereupon adjudged petitioner guilty of contempt and sentenced him to imprisonment for 3 months (R. 86-87). The judgment was affirmed on appeal, the circuit court of appeals stating, *inter alia*, "From our reading of the record, which we have examined carefully and in detail, we think that the findings of the court below are abundantly sustained by the testimony and that the conclusion that the defendant was guilty of contumacious conduct is well justified" (R. 217-218).

The transcript of petitioner's testimony before the grand jury revealed that he was questioned principally regarding his disposition of the \$68,-

125.48 which he withdrew from his account at the Harrisburg bank by checks payable to himself and to cash. He testified that in August 1941 he became acquainted with Mr. Hartline, superintendent of the Marietta project, which was being constructed at that time by Brann & Stuart, Inc., under a cost-plus-a-fixed-fee contract, and later with a Mr. Barrett, who was also employed on the Marietta project (R. 99-104, 193);³ that it was at Barrett's suggestion that he purchased a truck and equipment to rent to the Marietta project (R. 103); that he went into the slag business in October 1941 through contract with Hartline (R. 105); that his net income for 1941, part of which was from the slag business at Marietta, was \$19,674.53 (R. 203-204); that he began supplying slag for the Mechanicsburg project sometime after the first of 1942 and turned the business over to a Mr. Forney in August 1942 (R. 109, 200); that his net profit from the slag business during 1942, mostly from the Mechanicsburg project, was approximately \$79,000 (R. 204); that he was constantly

³ In accordance with the rule in the Third Circuit, the pertinent portions of the record in the case were printed in the appendices to the briefs filed in that court, rather than as a one-volume record. Our appendix (R. 98-209) contains the major portion of petitioner's testimony before the grand jury (R. 99-205), including practically all of that set out in petitioner's appendix (R. 8-74), and presents a more complete and accurate picture of the nature of the testimony. For this reason, our record references in this connection are to the portion of the printed record containing the appendix we filed in the court below.

in touch with Hartline regarding the supplying of the slag for the Mechanicsburg project and also was friendly with Hartline socially, having, among other things, bought a \$1,200 boat at Hartline's suggestion although he had never seen the boat and could not operate one (R. 108, 116-117, 168-169, 170-171, 190-191); and that, although he generally paid his bills by check (R. 117), he withdrew approximately \$68,500 in cash from his Mechanicsburg slag account at the Harrisburg Trust Co., Harrisburg, Pennsylvania, by eleven checks payable to himself and to cash, in the amounts and on the dates alleged in the presentment (*supra*, p. 4, fn. 1) (R. 121-122, 134, 167). Petitioner categorically denied ever giving anyone, including Hartline and Barrett, a "kickback" on the slag business (R. 107, 115, 116).

The evidence bearing directly upon petitioner's contumacy may be summarized as follows:⁴

When petitioner was first asked on January 13, 1943, what he did with the approximately \$68,500 he obtained by cashing the eleven checks, he stated that he "carried it around"—about \$10,000 in his pocket at one time—and then said he could show his disposition of the money if he could get his books (R. 108). When asked to explain the mat-

⁴ Our summary of the evidence does not cover all of the instances of petitioner's contumacy, for, as the district court stated, "It would be impracticable to set forth here sufficient portions of the testimony to show the extent of the Defendant's utter disregard for the authority of ^uthe district court (R. 80).

ter without the benefit of his records, he professed to have loaned Forney \$29,500 to get started in the slag business, which he had turned over to Forney because he "was tired of it," there was too much work attached to the business, and because Forney owed him \$8,000. At the same time, he admitted that he had had nothing to do on the job except hire the trucks, that he did this work after Forney took over the business, and that although Forney made \$10,000 in the business, the latter had never paid petitioner the \$8,000 because petitioner had not asked him for it (R. 108-109, 111). Asked about the remainder of the money, petitioner stated that he bought \$10,000 worth of tax bonds and, as to the balance, "If I get the books I can tell you"—"Get the books" (R. 109).

He was then questioned about losing money on horse races and stated he lost "a good bit of it" that way (R. 110). Presently, he admitted, "I didn't lose so great an amount of it" (R. 114) and, when asked how much, said he "spent last year approximately fifteen, twenty thousand dollars." When asked, "On horses?" he said "No." He then stated he could not tell how much he lost at the races (R. 114).

After he had changed the amount of tax bonds he had bought from \$10,000 to \$20,000, petitioner was asked to look at his records and explain the disposition of the remainder (assuming that he loaned Forney \$29,500). He then stated, "During

that period I think I bought \$3,000—about \$8,000.00” worth of bonds—he could not tell from his books (R. 109, 112). He admitted that before the middle of 1941 he had little cash and no money in a checking account and that he was not so short of memory that he could not remember what he did with a \$10,000 check four or five months previously, but furnished no explanation of his disposition of the money except that he loaned Forney \$29,500 and bought \$10,000 worth of bonds. The bond purchase was explained only by his assertion that he bought \$3,000 worth in October 1942 and \$700 worth in May 1942, a date which he later changed to January (R. 111, 118-120). He then asserted he would have to have his bookkeeper in order to explain his disposition of the money (R. 120).

Shortly thereafter he was specifically asked about his disposition of one of the \$10,000 checks and stated that he put it in his safe deposit box at Elizabethtown. When asked, “Why would you draw it out of the checking account and put it in your safe deposit box?”, he replied, “I do those things” (R. 120). He then again wanted his bookkeeper to refresh his memory and could not remember what he did with the cash obtained from the other checks (R. 121). He again asserted he loaned Forney \$29,500 in cash and stated, “I have to have a memorandum to get the rest of it” (R. 122). He said, however, that he “may have” lost

part of it on horses (R. 123). After this, he testified that he bought \$8,000 worth of bonds, to which he added \$10,000 more and then admitted that these bonds were bought in January 1943 (R. 123). He then stated that he could not explain the disposition of the money with the aid of all his records but again wanted his bookkeeper because, as he explained, he had told the bookkeeper what he did with the money and his bookkeeper would refresh his recollection as to what he had told him (R. 124-125).

Then, when the examiner suggested to petitioner that he had cashed three of the \$10,000 checks around the time he stated he had loaned Forney \$29,500, petitioner testified that he deposited three of the \$10,000 checks to Forney's bank account. However, he could not explain why he wrote three checks to deposit to Forney's account, admitting that he had had a pretty good idea how much Forney needed. (R. 126.) When questioned by a juror, he said he did not get a deposit slip for the \$29,500 he deposited to Forney's account (R. 130). Petitioner subsequently stated that he had bought \$3,000 worth of war bonds, Series E, during the period May to November 1942 (R. 130), which later turned out to be false (*infra*, pp. 14-15).

On April 28, 1943, petitioner testified before the grand jury with the aid of a memorandum which he stated he had had his bookkeeper prepare for him after he, petitioner, told the bookkeeper what

to put down (R. 143, 153, 156). On that date and on May 5th he was questioned concerning his disposition of each check. For the most part, he adhered to his story that he deposited to Forney's account the three \$10,000 checks drawn to cash and dated August 21 and 22 and September 2 (see R. 144, 145-146, 147), but at one time or another gave a conflicting answer as to each check, stating that he bought \$10,000 worth of tax bonds with the August 21st check (R. 143-144), that he "may have" deposited the August 22nd check to Forney's account (R. 145), and that he could not have transferred the September 2nd check to Forney's account "because his signature is on there" (R. 147). As to his disposition of three of the \$5,000 checks dated May 22 and May 26, and of the \$10,000 check dated July 11, he gave at different times two or more of the following explanations: He put the money in his pocket; put it in his safe deposit box; deposited it to his personal account; went to the races; did not remember what he did with it (see for first check dated May 22, R. 135-137, 138, 174, 175, 196; second check dated May 22, R. 138, 157, 175, 177, 196; \$5,000 check dated May 26, R. 139, 196; \$10,000 check dated July 11, R. 139-140, 182-183, 196). As to the other checks, he testified he used part of the \$500 check dated May 16 for living expenses (R. 134-135, 174), gave the \$5,500 check dated November 25 to a Mr. Balmer in repayment of a loan (R. 141, 197), and

bought bonds with the \$2,125.48 check dated October 9 (R. 141).

On May 5th all of petitioner's testimony regarding his use of part of the \$38,125.48 for the purchase of bonds was shown to be false insofar as the testimony was intended as an explanation of his immediate disposition of the proceeds of the checks. After having been asked on April 28 to bring in his bonds, petitioner appeared before the grand jury on May 3 with seven \$100 war bonds, stating that after taking his bonds out of his safe deposit box the previous Thursday or Friday, he had mislaid all the rest, including three \$1,000 war bonds (R. 162-164). The seven \$100 war bonds were purchased previous to the period he drew any of the eleven checks totaling \$68,125.48, the bonds being dated in January, February, and March of 1942 (R. 162), rather than in May 1942 as he had testified at one time (R. 120). On May 5th he brought the remainder of his bonds into court, explaining that after withdrawing them from his safe deposit box he had given them to a Mrs. Cohick at Wildwood, New Jersey, for safe-keeping, and had forgotten about it (R. 178). Instead of having three \$1,000 war bonds purchased during the period May to November 1942, as he had testified (R. 119, 163), he had two \$1,000 war bonds and these he had ordered on May 3, the very day he testified he had mislaid three \$1,000 war bonds (R. 179). The tax bonds in the amount

of \$10,000, which he had referred to in one instance as amounting to \$20,000 (*supra*, p. 10), were purchased in January 1943, more than five weeks after the date of the most recent check about which he was being questioned (*supra*, p. 4, fn. 1).

At times petitioner mentioned losing money on horse races, but his testimony in this connection was vague and conflicting. On January 13 he testified that he lost "a good bit" of the money on horses, then admitted "I didn't lose so great an amount of it," and finally stated that he could not tell how much he had lost at the races. He denied, however, that it was \$15,000 or \$20,000. (*Supra*, p. 10.) On May 5th he testified categorically that he had lost \$12,000 or \$15,000 at the races during the summer of 1942 (R. 188). When questioned about these losses, he remembered only that he lost "Several hundred dollars, it might be \$250.00 or \$300.00" at the Charlestown track and "About \$3,000.00" at either Bowie or Laurel (R. 189). He stated that he had bet as much as \$1,000 on one horse and had lost as much as \$6,000 or \$7,000 in one day, but assertedly did not remember the name of the horse on whom he had bet \$1,000 (R. 176, 185-188). In contrast, he remembered that he had paid Balmer \$25 a week when Balmer worked for him in 1926 and 1927 (R. 142); that Forney signed a check petitioner received from him (R. 148); that

Mrs. Hartline's nephew was five years old (R. 169); that Mrs. Hartline's brother was sixteen years old (R. 171); and that he paid \$1.85 a ton for some stone he sold to the Mechanicsburg project (R. 201).

The examiner also sought an explanation of petitioner's disposition of the proceeds of the checks by comparison of his 1942 and 1943 gross income, disbursements, and present assets. Petitioner's explanation from this standpoint (see R. 149-160, 194-199), was about \$25,000 short, without taking into account his 1941 income of \$19,674.53, of which he testified he did not spend more than \$5,000 on himself (R. 203-204). At one point when questioned in this connection, petitioner was asked if he had placed any money in his safe deposit box since his previous appearance before the grand jury. For a time he persistently refused to answer, then stated that he could not remember, and finally, after a brief recess, admitted that he put about \$3,000 or \$4,000 into the box since he last testified (R. 154-155).

The transcript of petitioner's testimony contains many other revealing instances of the character of his testimony. See R. 105; 112-113, 115-116; 117-118; 134-135; 146; 103, 165-166; 152-153; 153-154; 157. For instance, he answered one question with "That is true," and when asked "What is true?" replied "I don't know" (R. 146). Another time, when asked if he usually

knew where he spent large sums of money he carried around in his pocket, he replied, "Some I do, and some I don't want to know" (R. 105). In another instance, the record reveals that he smiled when replying "I don't remember anything" to a question relating to whether he paid Hartline or Barrett anything, and then, when asked why he had withdrawn this large amount of money from the bank in cash instead of making out checks to the persons to whom he intended to pay it, he replied, "I guess I like to feel the money" (R. 117-118).

ARGUMENT

I

Petitioner contends that the contempt judgment cannot stand because the presentment was too vague and general, in that it did not specify with particularity which of his answers before the grand jury were contumacious (Pet. 9-14). The contention is clearly lacking in merit.

In the first place, petitioner knew that the contempt charges were based upon the whole of his testimony before the grand jury (see *supra*, p. 6) and made no objection in that connection either at the reading of the presentment to the court on May 7 or at the contempt hearing on May 8. Cf. *O'Connell v. United States*, 40 F. (2d) 201, 203 (C. C. A. 2), certiorari dismissed, 296

U. S. 667. Secondly, petitioner concedes that he was "confronted" with the "*specific* issue * * * related to his testimony concerning his disposition of certain designated moneys" [italics supplied] (Pet. 11; see, also, Pet. 13). Since most of his testimony before the grand jury related to that subject (*supra*, pp. 9-16), the contempt judgment of the district court and the affirmance of the circuit court of appeals were necessarily predicated principally upon this "specific" charge (see R. 80-85, 217-218).

In any event, technical pleadings are not required in contempt cases; it is sufficient if petitioner was apprised of the *nature* of the charges against him. *Cooke v. United States*, 267 U. S. 517, 537; *Camarota v. United States*, 111 F. (2d) 243, 246 (C. C. A. 3), certiorari denied, 311 U. S. 651; *O'Connell v. United States*, *supra*, pp. 203-204; *Schwartz v. United States*, 217 Fed. 866, 868 (C. C. A. 4); *Hammond Lumber Co. v. Sailors' Union of the Pacific*, 149 Fed. 577, 580 (N. D. Cal.). That he was is clear from the presentment (*supra*, pp. 4-5), the proceedings before the district court (*supra*, pp. 6-7), and his concession that the contempt judgment is based upon what he regards as the general charges contained in the presentment.

Especially is it unnecessary to make a bill of particulars out of the presentment in a case, such

as the present, where the contumacy consists of the giving of evasive and obstructive answers. As the Circuit Court of Appeals for the Second Circuit stated in *O'Connell v. United States, supra*, pages 203-204, this type of contumacy "will seldom appear from a single answer or from a small portion of a witness' testimony. Only by considering a large number of questions and answers will obduracy of this character usually become apparent. * * * To have required the prosecutor to specify only part of" the testimony "would not have made the charge more specific; it would simply have limited the evidence * * * offered to sustain it." ⁵

II

Petitioner appears to attack the sufficiency of the evidence to sustain the contempt judgment on the ground that he "fully and to the best of his recollection gave an accounting of the disposition he made of this" \$38,125.48 which he withdrew from his bank by checks payable to himself, and that "The Government has never shown that this accounting was false in any respect or that it was

⁵ None of the cases cited by petitioner can be construed as indicating a contrary view, except the opinion of the district court set out in the statement of the case in *In re Cantor*, 215 Fed. 61, 64 (C. C. A. 2) and quoted in petitioner's brief at page 11. The circuit court of appeals in that case, the same court which subsequently decided the *O'Connell* case, *supra*, affirmed the judgment of the district court without mention of the point here involved.

inherently improbable or necessarily unreasonable" (Pet. 8-9). But petitioner did not answer to the best of his recollection, and the remainder of these assertions ignores the ground upon which the judgment was based.

It should be noted at the outset that petitioner's conclusions from the evidence are distorted. His conflicting statements regarding his disposition of the \$38,125.48 did not amount to an "accounting" of his disposition of the money, and a review of his testimony (*supra*, pp. 10-16) clearly impels the conclusion that he testified falsely in that connection.

It is immaterial, however, whether petitioner's testimony in all of its successive versions was in fact false, or whether in some of its successive versions it was true. He was charged with failing to disclose his disposition of the \$38,125.48; giving answers which were obstructive, evasive, perjurious, contumacious, half truth, shifts, and subterfuges; "answering with the first preposterous fancy which he chose to put forward;" "contumaciously parrying with the examiner and Grand Jurors;" and "in otherwise failing and refusing truthfully and fully to answer" questions put to him in the proceedings before the grand jury (*supra*, pp. 3-5). The charges were properly based upon the whole of his testimony before the grand jury (*supra*, pp. 4-6). Plainly, petitioner did not answer to the best of his recollection, but

instead, as a statement of his testimony shows (*supra*, pp. 8-17), resorted to pretended failure of memory, procrastination, and concealment. The district court, in finding that petitioner's guilt was shown beyond a reasonable doubt (R. 80), stated, "I am not particularly concerned with the obvious falsity of the Defendant's testimony as such. What does concern the Court is that this Defendant by testifying falsely, and by utilizing other means of concealing the true facts, has obstructed and delayed the investigation. * * * from the standpoint of the value of the information obtained by the Grand Jury, the answers and statements made by him are substantially equivalent to a refusal to testify" (R. 80-81). As the circuit court of appeals stated, "What the court [district court] did was to conclude from a reading of the defendant's answers to the questions asked him before the grand jury that, on the whole, he had been evasive, reluctant and dissembling for the intended purpose of preventing and obstructing the grand jury from ascertaining anything from him concerning the matters under inquiry * * * and that such was indeed the quite evident effect of his conduct" (R. 217). The circuit court of appeals affirmed on this basis (R. 217-218). That it was a proper basis for the contempt judgment is clear, regardless of the falsity of petitioner's

answers, for it is contempt to obstruct the administration of justice by refusing to testify⁶ or by giving answers which amount to a deliberate subterfuge⁷ or concealment of facts,⁸ or are vague, misleading, and evasive.⁹

In this light, the findings of the district court are, as the court below stated (R. 218), "abundantly sustained by the testimony [see *supra*, pp. 8-17] and * * * the conclusion that the defendant was guilty of contumacious conduct is well justified." Cf. *Clark v. United States*, 289 U. S. 1; *United States v. McGovern*, 60 F. (2d) 880 (C. C. A. 2), certiorari denied, 287 U. S. 650; *Schleier v. United States*, 72 F. (2d) 414 (C. C. A. 2), certiorari denied, 293 U. S. 607. Accordingly, this Court has no occasion to review the evidence further. *Delaney v. United States*, 263 U. S. 586, 589, 590; *United States v. Johnson*, Nos. 4 and 5, last term, decided June 7, 1943.

⁶ *Ex parte Hudgings*, 249 U. S. 378, 382.

⁷ *United States v. McGovern*, 60 F. (2d) 880, 890 (C. C. A. 2), certiorari denied, 287 U. S. 650.

⁸ *Clark v. United States*, 289 U. S. 1, 10; *O'Connell v. United States*, *supra*, pp. 204-205; *Lang v. United States*, 55 F. (2d) 922, 923 (C. C. A. 2), certiorari dismissed, 286 U. S. 523.

⁹ *In re Presentment by Grand Jury of Ellison*, 133 F. (2d) 903 (C. C. A. 3), certiorari denied, 318 U. S. 791; *United States v. McGovern*, *supra*, p. 890; *Lang v. United States*, *supra*, p. 923; *Schleier v. United States*, 72 F. (2d) 414, 417 (C. C. A. 2), certiorari denied, 293 U. S. 607; *Loubriel v. United States*, 9 F. (2d) 807, 808 (C. C. A. 2); *In re Kaplan Bros.*, 213 Fed. 753 (C. C. A. 3), certiorari denied, 234 U. S. 765; *Ex parte Bick*, 155 Fed. 908 (S. D. N. Y.).

CONCLUSION

The case was correctly decided below and involves no conflict of decisions or important question of law. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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